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10

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION  
13

14 IN RE SEAGATE TECHNOLOGY LLC  
LITIGATION

Case No. 5:16-cv-00523-RMW

**STIPULATED PROTECTIVE ORDER**

15  
16 CONSOLIDATED ACTION  
17

18 **1. PURPOSES AND LIMITATIONS**

19 Disclosure and discovery activity in this action are likely to involve production of  
20 confidential, proprietary, or private information for which special protection from public  
21 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.  
22 Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated  
23 Protective Order pursuant to the Court's authority under Federal Rule of Civil Procedure 26(c) and  
24 Federal Rule of Evidence 502. The parties acknowledge that this Order does not confer blanket  
25 protections on all disclosures or responses to discovery and that the protection it affords from  
26 public disclosure and use extends only to the limited information or items that are entitled to  
27 confidential treatment under the applicable legal principles. The parties further acknowledge, as  
28 set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file

1 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be  
2 followed and the standards that will be applied when a party seeks permission from the Court to  
3 file material under seal.

4 **2. DEFINITIONS**

5 2.1 Challenging Party: a Party or Non-Party that challenges the designation of  
6 information or items under this Order.

7 2.2 “CONFIDENTIAL” Information or Items: information (regardless of how it is  
8 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule  
9 of Civil Procedure 26(c).

10 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as  
11 well as their support staff).

12 2.4 Designating Party: a Party or Non-Party that designates information or items that it  
13 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY  
14 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

15 2.5 Disclosure or Discovery Material: all items or information, regardless of the  
16 medium or manner in which it is generated, stored, or maintained (including, among other things,  
17 testimony, transcripts, and tangible things), that are produced or generated in disclosures or  
18 responses to discovery in this matter.

19 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to  
20 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as  
21 a consultant in this action, (2) is not a current employee of a Party or of a Party’s competitor, and  
22 (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party’s  
23 competitor.

24 2.7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or  
25 Items: extremely sensitive “Confidential Information or Items,” disclosure of which to another  
26 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by  
27 less restrictive means.  
28

1           2.8     House Counsel: attorneys who are employees of a party to this action. House  
2 Counsel does not include Outside Counsel of Record or any other outside counsel.

3           2.9     Non-Party: any natural person, partnership, corporation, association, or other legal  
4 entity not named as a Party to this action.

5           2.10    Outside Counsel of Record: attorneys who are not employees of a party to this  
6 action but are retained to represent or advise a party to this action and have appeared in this action  
7 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

8           2.11    Party: any party to this action, including all of its officers, directors, employees,  
9 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

10          2.12    Producing Party: a Party or Non-Party that produces Disclosure or Discovery  
11 Material in this action.

12          2.13    Professional Vendors: persons or entities that provide litigation support services  
13 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and  
14 organizing, storing, or retrieving data in any form or medium) and their employees and  
15 subcontractors.

16          2.14    Protected Material: any Disclosure or Discovery Material that is designated as  
17 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

18          2.15    Receiving Party: a Party that receives Disclosure or Discovery Material from a  
19 Producing Party.

### 20     **3.     SCOPE**

21           The protections conferred by this Stipulated Protective Order cover not only Protected  
22 Material (as defined above), but also (1) any information copied or extracted from Protected  
23 Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any  
24 testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected  
25 Material. However, the protections conferred by this Stipulated Protective Order do not cover the  
26 following information: (a) any information that is in the public domain at the time of disclosure to  
27 a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as  
28 a result of publication not involving a violation of this Order, including becoming part of the

1 public record through trial or otherwise; and (b) any information known to the Receiving Party  
2 prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who  
3 obtained the information lawfully and under no obligation of confidentiality to the Designating  
4 Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

5 **4. DURATION**

6 Even after final disposition of this litigation, the confidentiality obligations imposed by this  
7 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
8 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims  
9 and defenses in this action, with or without prejudice; and (2) final judgment herein after the  
10 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,  
11 including the time limits for filing any motions or applications for extension of time pursuant to  
12 applicable law.

13 **5. DESIGNATING PROTECTED MATERIAL**

14 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
15 or Non-Party that designates information or items for protection under this Order must take care to  
16 limit any such designation to specific material that qualifies under the appropriate standards. To  
17 the extent it is practical to do so, the Designating Party must designate for protection only those  
18 parts of material, documents, items, or oral or written communications that qualify – so that other  
19 portions of the material, documents, items, or communications for which protection is not  
20 warranted are not swept unjustifiably within the ambit of this Order.

21 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
22 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
23 unnecessarily encumber or retard the case development process or to impose unnecessary  
24 expenses and burdens on other parties) expose the Designating Party to sanctions.

25 If it comes to a Designating Party's attention that information or items that it designated  
26 for protection do not qualify for protection at all or do not qualify for the level of protection  
27 initially asserted, that Designating Party must promptly notify all other parties that it is  
28 withdrawing the mistaken designation.

1           5.2    Manner and Timing of Designations. Except as otherwise provided in this Order  
2 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,  
3 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so  
4 designated before the material is disclosed or produced.

5           Designation in conformity with this Order requires:

6                   (a)    for information in documentary form (e.g., paper or electronic documents,  
7 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing  
8 Party affix the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’  
9 EYES ONLY” to each page that contains protected material. If only a portion or portions of the  
10 material on a page qualifies for protection, the Producing Party also must clearly identify the  
11 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for  
12 each portion, the level of protection being asserted.

13           A Party or Non-Party that makes original documents or materials available for inspection  
14 need not designate them for protection until after the inspecting Party has indicated which material  
15 it would like copied and produced. During the inspection and before the designation, all of the  
16 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –  
17 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants  
18 copied and produced, the Producing Party must determine which documents, or portions thereof,  
19 qualify for protection under this Order. Then, before producing the specified documents, the  
20 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY  
21 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” to each page that contains Protected Material.  
22 If only a portion or portions of the material on a page qualifies for protection, the Producing Party  
23 also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the  
24 margins) and must specify, for each portion, the level of protection being asserted.

25                   (b)    for testimony given in deposition or in other pretrial or trial proceedings,  
26 that the Designating Party identify on the record, before the close of the deposition, hearing, or  
27 other proceeding, all protected testimony and specify the level of protection being asserted. When  
28 it is impractical to identify separately each portion of testimony that is entitled to protection and it

1 appears that substantial portions of the testimony may qualify for protection, the Designating Party  
2 may invoke on the record (before the deposition, hearing, or other proceeding is concluded) a right  
3 to have up to 21 days to identify the specific portions of the testimony as to which protection is  
4 sought and to specify the level of protection being asserted. Only those portions of the testimony  
5 that are appropriately designated for protection within the 21 days shall be covered by the  
6 provisions of this Stipulated Protective Order. Alternatively, a Designating Party may specify, at  
7 the deposition or up to 21 days afterwards if that period is properly invoked, that the entire  
8 transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
9 ATTORNEYS’ EYES ONLY.”

10 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or  
11 other proceeding to include Protected Material so that the other parties can ensure that only  
12 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”  
13 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition  
14 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL  
15 – ATTORNEYS’ EYES ONLY.”

16 Transcripts containing Protected Material shall have an obvious legend on the title page  
17 that the transcript contains Protected Material, and the title page shall be followed by a list of all  
18 pages (including line numbers as appropriate) that have been designated as Protected Material and  
19 the level of protection being asserted by the Designating Party. The Designating Party shall  
20 inform the court reporter of these requirements. Any transcript that is prepared before the  
21 expiration of a 21-day period for designation shall be treated during that period as if it had been  
22 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless  
23 otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually  
24 designated.

25 (c) for information produced in some form other than documentary and for any  
26 other tangible items, that the Producing Party affix in a prominent place on the exterior of the  
27 container or containers in which the information or item is stored the legend “CONFIDENTIAL”  
28 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”. If only a portion or portions of

1 the information or item warrant protection, the Producing Party, to the extent practicable, shall  
2 identify the protected portion(s) and specify the level of protection being asserted.

3       5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
4 designate qualified information or items does not, standing alone, waive the Designating Party's  
5 right to secure protection under this Order for such material. Upon timely correction of a  
6 designation, the Receiving Party must make reasonable efforts to assure that the material is treated  
7 and marked appropriately in accordance with the provisions of this Order.

8 **6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9       6.1     Timing of Challenges. Any Party or Non-Party may challenge a designation of  
10 confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality  
11 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
12 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to  
13 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
14 original designation is disclosed.

15       6.2     Meet and Confer. The Challenging Party shall initiate the dispute resolution  
16 process by providing written notice of each designation it is challenging and describing the basis  
17 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written  
18 notice must recite that the challenge to confidentiality is being made in accordance with this  
19 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in  
20 good faith and must begin the process by conferring directly (in voice to voice dialogue; other  
21 forms of communication are not sufficient) within 14 days of the date of service of notice. In  
22 conferring, the Challenging Party must explain the basis for its belief that the confidentiality  
23 designation was not proper and must give the Designating Party an opportunity to review the  
24 designated material, to reconsider the circumstances, and, if no change in designation is offered, to  
25 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage  
26 of the challenge process only if it has engaged in this meet and confer process first or establishes  
27 that the Designating Party is unwilling to participate in the meet and confer process in a timely  
28 manner.

1           6.3     Judicial Intervention. If the Parties cannot resolve a challenge without court  
2 intervention, the Designating Party shall file and serve a motion to retain confidentiality under  
3 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of  
4 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer  
5 process will not resolve their dispute, whichever is earlier. Each such motion must be  
6 accompanied by a competent declaration affirming that the movant has complied with the meet  
7 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to  
8 make such a motion including the required declaration within 21 days (or 14 days, if applicable)  
9 shall automatically waive the confidentiality designation for each challenged designation. In  
10 addition, the Challenging Party may file a motion challenging a confidentiality designation at any  
11 time if there is good cause for doing so, including a challenge to the designation of a deposition  
12 transcript or any portions thereof. Any motion brought pursuant to this provision must be  
13 accompanied by a competent declaration affirming that the movant has complied with the meet  
14 and confer requirements imposed by the preceding paragraph.

15           The burden of persuasion in any such challenge proceeding shall be on the Designating  
16 Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose  
17 unnecessary expenses and burdens on other parties) may expose the Challenging Party to  
18 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to  
19 file a motion to retain confidentiality as described above, all parties shall continue to afford the  
20 material in question the level of protection to which it is entitled under the Producing Party's  
21 designation until the court rules on the challenge.

## 22     **7.     ACCESS TO AND USE OF PROTECTED MATERIAL**

23           7.1     Basic Principles. A Receiving Party may use Protected Material that is disclosed or  
24 produced by another Party or by a Non-Party in connection with this case only for prosecuting,  
25 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to  
26 the categories of persons and under the conditions described in this Order. When the litigation has  
27 been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL  
28 DISPOSITION).



1 Protected Material must be stored and maintained by a Receiving Party at a location and in  
2 a secure manner<sup>1</sup> that ensures that access is limited to the persons authorized under this Order.

3 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered  
4 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any  
5 information or item designated “CONFIDENTIAL” only to:

6 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
7 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
8 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
9 Bound” that is attached hereto as Exhibit A;

10 (b) the officers, directors, and employees (including House Counsel) of the  
11 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
12 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (c) Experts (as defined in this Order) of the Receiving Party to whom  
14 disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment  
15 and Agreement to Be Bound” (Exhibit A);

16 (d) the court and its personnel;

17 (e) court reporters and their staff, professional jury or trial consultants, and  
18 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (f) during their depositions, witnesses in the action to whom disclosure is  
21 reasonably necessary and who have signed the “Acknowledgment and Agreement to Be Bound”  
22 (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the court. Pages of  
23 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be  
24 separately bound by the court reporter and may not be disclosed to anyone except as permitted  
25 under this Stipulated Protective Order.

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27 \_\_\_\_\_  
28 <sup>1</sup> It may be appropriate under certain circumstances to require the Receiving Party to store any  
electronic Protected Material in password-protected form.

1 (g) the author or recipient of a document containing the information or a  
 2 custodian or other person who otherwise possessed or knew the information.

3 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”  
 4 Information or Items. Unless otherwise ordered by the court or permitted in writing by the  
 5 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY  
 6 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as  
 8 employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the  
 9 information for this litigation and who have signed the “Acknowledgment and Agreement to Be  
 10 Bound” that is attached hereto as Exhibit A;

11 (b) Experts of the Receiving Party (1) to whom disclosure is reasonably  
 12 necessary for this litigation, and (2) who have signed the “Acknowledgment and Agreement to Be  
 13 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4, below, have  
 14 been followed];

15 (c) the court and its personnel;

16 (d) court reporters and their staff, professional jury or trial consultants, and  
 17 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have  
 18 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A); and

19 (e) the author or recipient of a document containing the information or a  
 20 custodian or other person who otherwise possessed or knew the information.

21 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY  
 22 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items to or Experts.

23 (a) (1) Unless otherwise ordered by the court or agreed to in writing by the  
 24 Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any  
 25 information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’  
 26 EYES ONLY” pursuant to paragraph 7.3(b) first must make a written request to the Designating  
 27 Party that (1) sets forth the full name of the Expert and the city and state of his or her primary  
 28

1 residence, (2) attaches a copy of the Expert's current resume, and (3) identifies the Expert's  
2 current employer(s).

3 (b) A Party that makes a request and provides the information specified in the  
4 preceding respective paragraphs may disclose the subject Protected Material to the identified  
5 Expert unless, within seven days of delivering the request, the Party receives a written objection  
6 from the Designating Party. Any such objection must set forth in detail the grounds on which it is  
7 based.

8 (c) The Designating Party must meet and confer with the requesting Party  
9 (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven  
10 days of the written objection. If no agreement is reached, the Party seeking to make the disclosure  
11 to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil  
12 Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such motion must  
13 describe the circumstances with specificity, set forth in detail the reasons why the disclosure to the  
14 Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and  
15 suggest any additional means that could be used to reduce that risk. In addition, any such motion  
16 must be accompanied by a competent declaration describing the parties' efforts to resolve the  
17 matter by agreement (i.e., the extent and the content of the meet and confer discussions) and  
18 setting forth the reasons advanced by the Designating Party for its refusal to approve the  
19 disclosure.

20 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden  
21 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)  
22 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

23 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**  
24 **OTHER LITIGATION**

25 If a Party is served with a subpoena or a court order issued in other litigation that compels  
26 disclosure of any information or items designated in this action as "CONFIDENTIAL" or  
27 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," that Party must:  
28

1 (a) promptly notify in writing the Designating Party. Such notification shall  
2 include a copy of the subpoena or court order;

3 (b) promptly notify in writing the party who caused the subpoena or order to  
4 issue in the other litigation that some or all of the material covered by the subpoena or order is  
5 subject to this Protective Order. Such notification shall include a copy of this Stipulated  
6 Protective Order; and

7 (c) cooperate with respect to all reasonable procedures sought to be pursued by  
8 the Designating Party whose Protected Material may be affected.<sup>2</sup>

9 If the Designating Party timely seeks a protective order, the Party served with the subpoena  
10 or court order shall not produce any information designated in this action as “CONFIDENTIAL”  
11 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” before a determination by the  
12 court from which the subpoena or order issued, unless the Party has obtained the Designating  
13 Party’s permission. The Designating Party shall bear the burden and expense of seeking  
14 protection in that court of its confidential material – and nothing in these provisions should be  
15 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful  
16 directive from another court.

17 **9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**  
18 **THIS LITIGATION**

19 (a) The terms of this Order are applicable to information produced by a Non-  
20 Party in this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –  
21 ATTORNEYS’ EYES ONLY. “Such information produced by Non-Parties in connection with  
22 this litigation is protected by the remedies and relief provided by this Order. Nothing in these  
23 provisions should be construed as prohibiting a Non-Party from seeking additional protections.  
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27 <sup>2</sup> The purpose of imposing these duties is to alert the interested parties to the existence of this  
28 Protective Order and to afford the Designating Party in this case an opportunity to try to  
protect its confidentiality interests in the court from which the subpoena or order issued.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

1. promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

3. make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court.<sup>3</sup> Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

#### **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the

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<sup>3</sup> The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect its confidentiality interests in this court.

1 terms of this Order, and (d) request such person or persons to execute the “Acknowledgment and  
2 Agreement to Be Bound” that is attached hereto as Exhibit A.

3 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**  
4 **PROTECTED MATERIAL**

5 When a Producing Party gives notice to Receiving Parties that certain inadvertently  
6 produced material is subject to a claim of privilege or other protection, the obligations of the  
7 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
8 provision is not intended to modify whatever procedure may be established in an e-discovery order  
9 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence  
10 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a  
11 communication or information covered by the attorney-client privilege or work product protection,  
12 the parties may incorporate their agreement in the stipulated protective order submitted to the  
13 court.

14 **12. MISCELLANEOUS**

15 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to  
16 seek its modification by the court in the future.

17 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective  
18 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
19 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no  
20 Party waives any right to object on any ground to use in evidence of any of the material covered  
21 by this Protective Order.

22 12.3 Filing Protected Material. Without written permission from the Designating Party  
23 or a court order secured after appropriate notice to all interested persons, a Party may not file in  
24 the public record in this action any Protected Material. A Party that seeks to file under seal any  
25 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed  
26 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at  
27 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request  
28 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or

otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(e) is denied by the court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)(2) unless otherwise instructed by the court.

### 13. **FINAL DISPOSITION**

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

Dated: July 8, 2016

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By /s/ Anna S. McLean

ANNA S. McLEAN

Attorneys for Defendant

SEAGATE TECHNOLOGY LLC

I, Anna McLean, whose user ID and password are used to efile this document, hereby attests that, pursuant to Local Rule 5.1(i)(3), concurrence in this filing was obtained from each of the other Signatories, in lieu of each's signature.

1 Dated: July 8, 2016

HAGENS BERMAN SOBOL SHAPIRO LLP

2 By /s/Steve W. Berman

3 STEVE W. BERMAN

Attorneys for Plaintiffs and Proposed Class

4 Dated: July 8, 2016

AXLER GOLDICH LLC

5 By /s/ Marc A. Goldich

6 MARC A. GOLDICH (*Pro Hac Vice*)

7 Attorneys for Plaintiffs and Proposed Class

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9  
10 **PURSUANT TO STIPULATION, IT IS SO ORDERED.**

11  
12 Dated:

\_\_\_\_\_  
The Honorable Ronald M. Whyte  
United States Senior District Judge



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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_, of \_\_\_\_\_, declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on \_\_\_\_\_ in the case of *In re Seagate Technology LLC*, 5:16-cv-00523-RMW. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of \_\_\_\_\_ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_  
[printed name]

Signature: \_\_\_\_\_  
[signature]